

COMPLETED

APPLICATION FOR CONFIDENTIAL DESIGNATION

Applicant: SPX Cooling Technologies, Inc.

Description of Business: Construction and repair of cooling towers for industrial applications

1. Title of record being requested for Designation as a Confidential Record.

Document entitled "SPX Proprietary Seismic Test Analysis Report - Condensed 2007 09 29.doc" hereinafter referred to as "the Records".

2. State specifically what parts of the information should be confidential.

The entirety of the report, but in particular, anything related to the design of the cooling tower or its materials and any details regarding the test that the report describes, other than when and where it was conducted.

3. State how long the information should be kept confidential.

Thirty (30) years from date of disclosure.

4. Cite and discuss the provision of the Public Records Act or other law that allow the Commission to keep the record confidential.

The Records are confidential, proprietary and trade secret information that is exempt from disclosure pursuant to Government Code section 6254(k). Section 6254(k) exempts from disclosure, "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege. Generally speaking, both state and federal law, including the laws relating to civil discovery, recognize that the owner of confidential and proprietary business information has a right not to disclose such information, and to condition disclosure on a promise of confidentiality that is enforceable by the courts. In particular, Evidence Code section 1060 provides, "[. . .] the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice."

Evidence Code section 1061 defines "trade secret" by reference to Civil Code section 3426.1 and Penal Code section 399c. Looking to the language of those sections, trade secret "[. . .] means information, including a formula, pattern, compilation, program, device, method technique, or process, that: (1) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

DOCKET	
08-SPX-1	
DATE	OCT 05 2007
RECD.	FEB 29 2008

5. Do the records contain trade secrets?

Yes. The Records subject to this request include detailed design information about SPX CT cooling towers that is the product of years of design and construction experience unique to SPX CT. The Records are valuable to SPX CT competitors, and the competitors of SPX CT customers, because they can be used to improve competing designs, lower construction costs, and ascertain the cost of operating and maintaining the cooling tower. The Records are the subject of reasonable efforts by SPX CT. This is set forth in more detail.

6. State the specific nature of that competitive advantage that would be lost if such trade secrets were disclosed and how the competitive advantage would be lost.

The design of the SPX Cooling Tower is the result of extensive testing, experience and analysis by SPX employees over three decades.

This SPX design is superior to other cooling tower designs in terms of thermal performance, structural integrity and resiliency (particularly in seismically active environments), resistance to other hostile environments, and overall safety.

The disclosure of any design details of the SPX cooling tower, or its components, would enable competitors to delude prospective customers and code officials that their cooling towers are equivalent. This delusion would erode SPX capability to recoup its investment in state-of-the-art cooling technology by not being able to sustain required sales and pricing levels. Furthermore, the information contained in the Records would be used by our competitors to improve competing designs, lower construction costs, and ascertain the cost of operating and maintaining the cooling tower.

7. Describe the value of the information contained in the Records to SPXCT?

The proprietary test results conveyed within this confidential report prove conclusively that the SPX FRP Cooling Tower is a certified building material for use in the State of California with an R-value stated in the attached report and Omega as stated in the report. The test process and the engineering evaluators were approved in advance by the CEC/CBO. The results of this test place SPX in the unique position of having the ONLY CEC/CBO approved FRP Cooling Tower design. The results of this test also give SPX the exclusive ability to use FRP as a certified building material in the State of California.

8. Explain the value of the information contained in the Records to the State of California.

The proprietary test results conveyed within this confidential report substantiate a cooling tower design that uses environmentally friendly building materials in a cost effective cooling tower that is able to satisfy demanding seismic conditions experienced within the State of California.

9. Explain the ease or difficulty in which the information contained in the Records could be legitimately acquired or duplicated by others.

In order for others to legitimately acquire or duplicate the information contained in the Records, they first must embark on extensive research to develop the necessary knowledge in material science and structural behavior. This pursuit would entail a tremendous amount of time and expense. In addition, they would also need to develop the knowledge to construct the seismic test program and bear the significant costs associated with the test program.

10. State whether the information contained in the Records may be disclosed if aggregated with other information or masked to conceal certain portions, and if so describe the degree of aggregation of masking it.

No. Only the fact that a test was conducted by the University of California in San Diego in 2007 may be disclosed, and only then for the purpose of justifying the CEC and CBO approval of SPX Seismic Designs.

11. How does SPX keep the info confidential?

Besides the Research & Development personnel directly involved in the test described in this report, only the engineering personnel directly involved in the design of SPX Cooling Towers in seismically active areas will be given access to this information, and they are all signatory of a confidentiality and non-compete agreement.

The contracted engineers and testers involved with the test have also signed confidentiality agreements.

Beyond the fact that SPX has the only test proven cooling tower design for seismically active areas, personnel outside of the above mentioned groups within SPX itself would also be restricted from access to the test results.

The only exceptions to the above are key legal and management personnel within SPX that facilitated in the process of preparing, approving, procuring or protecting the test and its results.

12. Explain how the Applicant keeps the information in the Records confidential.

Extensive effort has been applied by SPX to keep the methods and results of the test described in this confidential report from the public. All SPX tests for the past 50+ years have been conducted in the secrecy of its Research & Development Center in a cave located in Kansas City, Missouri. Although this specific test required equipment beyond the capability of the secluded SPX R&D Center, the test site and testers in San Diego, California operated under legally binding confidentiality agreements and tight security.

Therefore, in the absence of a release of information by the approving Code Officials of California, this information is believed to be quite secure.

13. Have we ever disclosed it to a person other than an employee of ours and if so, under what circumstances;

The only people outside of SPX that have had any access to the information contained in the Records to date have been the David Evans & Associates (consultants who directed test program and authored the report contained in the Records) and the University of California (conductors of the test). All of whom signed confidentiality agreements.

I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge and that I am authorized to make the application and certification on behalf of the Applicant.

Date: 10/5/07

Name and Title: Tabb Buel
Manager, Project Management

Signed: Tabb Buel
Tabb Buel 2/27/08